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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	MM Docket No. 96-169
)	
Chester Broadcasting Company, Inc.)	File No. BR-950726YG
)	
For Renewal of License)	
for Station WGCD(AM))	
Chester, South Carolina)	
To: Administrative Law Judge		
John M. Frysiak		

MASS MEDIA BUREAU'S COMMENTS
IN SUPPORT OF MOTION FOR SUMMARY
DECISION

1. On January 10, 1997, Chester Broadcasting Company, Inc. ("Chester") filed a motion seeking favorable summary decision of the following issues specified in the Hearing Designation Order (HDO) released August 7, 1996:

- (1) To determine whether Chester Broadcasting Company, Inc. has the capability and intent to expeditiously resume the broadcast operations of WGCD(AM), consistent with the Commission's Rules.
- (2) To determine whether Chester Broadcasting Company, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

The Mass Media Bureau submits the following comments in support of Chester's motion.

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Background

2. Chester is the licensee of WGCD(AM), Chester, South Carolina. WGCD(AM) ceased operations on July 31, 1993, when the station's general manager resigned and the licensee's principals claimed that they were unable to manage the station. On November 29, 1993, Chester requested Special Temporary Authorization (STA) to remain silent, stating that if efforts to sell the station were unsuccessful, it would dissolve the corporation and surrender its license by June 30, 1994. The Commission granted that request and gave Chester authority to remain silent through April 30, 1994. Thereafter, Chester repeatedly requested continued authority to remain silent. Chester's last temporary authorization to remain silent expired March 11, 1996.

3. On March 7, 1996, Chester requested permission to remain silent beyond March 11, 1996, indicating that it continued "to work diligently to obtain a purchaser for the station." As of August 2, 1996, no application for the assignment of the station's license had been filed. The Commission released the HDO on August 7, 1996.

4. On December 10, 1996, Chester requested suspension of the dates set forth in the Order, 96M-222, released September 19, 1996. Chester predicated this request on the Commission's decision in Southwestern Broadcasting Corp., FCC 96-443, released November 15, 1996, which directed the Bureau to expeditiously process applications filed by licensees of silent stations which had been designated for hearing.

5. By Order, released December 17, 1996, FCC 96M-271, Chester's Motion for Suspension of Hearing Dates was granted. The Order postponed the procedural schedule until after February 9, 1997, and cancelled the hearing date of January 6, 1997. The Order also stated that if WGCD(AM) failed to resume operations by February 8, 1997, its license would be terminated.

6. According to the instant motion, WGCD(AM) resumed regular broadcast operations with its licensed facilities on January 4, 1997, meeting the "minimum operating schedule" specified in Section 73.1740 of the Commission's Rules. Chester further declares that it entered into a Time Brokerage Agreement ("TBA") with a prospective buyer, Frank Neely. Finally, Chester avers that the TBA assures that WGCD(AM) will have sufficient revenue and programming to continue operating until consummation of the proposed sale of the station. Chester supports its allegations with a declaration from its president, William C. Stone, Jr..

Discussion

7. Section 1.251 of the Commission's Rules provides that the presiding judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. See New Broadcasting Corp., 44 FCC 2d 386 (Rev. Bd. 1973); Salem Broadcasting Co., 30 RR 2d 995 (ALJ 1974). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is otherwise entitled to summary decision. Telecorpus Inc.,

30 RR 2d 1641, 1644 (ALJ 1974). Therefore, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (Rev.Bd. 1975). It is the Mass Media Bureau's position that no genuine issues of any material fact remain.

8. Issue (1) seeks to determine whether Chester has the capability and intent to expeditiously resume the broadcast operations of the station consistent with the Commission's Rules. Given that Chester has resumed broadcasting and has entered into a TBA with a proposed assignee of the WGCD(AM) license, it should be concluded that Chester has the capability and intent to resume broadcasting. Issue (1) should be resolved in Chester's favor.

9. Issue (2) seeks to determine whether Chester has violated Section 73.1740 and/or Section 73.1750 of the Commission's Rules. Pursuant to Section 73.1740, Chester was obligated to submit an informal written request to remain silent when it was unable to continue station operations due to circumstances beyond its control. Pursuant to Section 73.1750, Chester should have notified the Commission of permanent discontinuance of station operation and forwarded the station's license to the Commission for cancellation if Chester intended to permanently discontinue operation of WGCD(AM).

10. Chester contends that the Commission "deferred" its final STA extension request of March 7, 1996, pending a decision in this case. Chester also argues that WGCD "has not

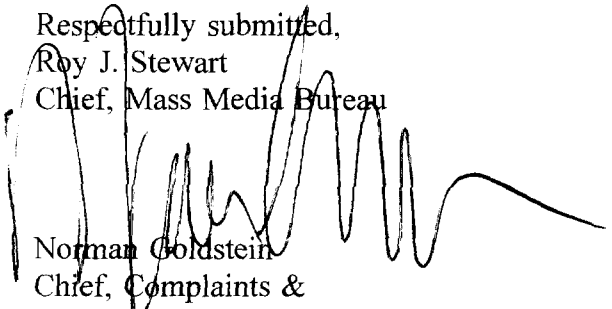
been off the air without authority and, thus, has not violated Section 73.1740." The Bureau submits that the proper conclusion is that in the HDO the Commission denied Chester's last STA extension request because the continued failure to operate cannot be attributed to causes beyond the licensee's control. In any event, Chester has submitted no evidence regarding its compliance with Section 73.1740. See Victorson Group, Inc., 6 FCC Rcd 1697, 1701 (Rev. Bd. 1991). Accordingly, it should be concluded that Chester violated Section 73.1740.

11. Concerning Section 73.1750 of the Commission's Rules, Chester's continued requests for extensions of the original STA request to remain silent, its return to the air, and its entry into a TBA, indicate that Chester never intended to discontinue operation of WGCD(AM). Furthermore, Chester's application for a renewal of license as opposed to turning in its license is indicative of its intent to resume broadcasting as soon as a buyer could be found. It therefore appears that Chester did not violate Section 73.1750 of the Rules.

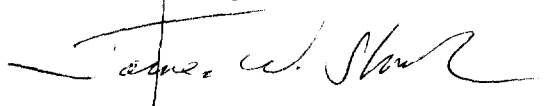
12. Issue (3) seeks to determine whether Chester is qualified to be and remain the licensee of WGCD(AM). Chester has demonstrated through its resumption of broadcasting on WGCD(AM), and its entering into an agreement with a third party to ensure continued broadcasting, that Chester is qualified to be and remain the licensee of WGCD(AM). The ultimate decision for summary decision in this case is whether Chester's license to operate WGCD(AM) should be renewed. Chester violated Section 73.1740 of the Commission's Rules, but the violation was of a relatively brief five-month duration. Therefore, the license should be renewed.

13. In sum, the Bureau supports favorable summary decision of the issues and grant of the above-captioned renewal application.

Respectfully submitted,
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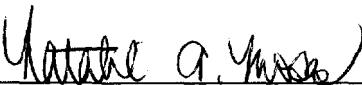
January 24, 1997

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints & Political Programming Branch, Mass Media Bureau, certifies that she has on this 24th day of January 1997, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media's Comments in Support of Motion for Summary Decision" to:

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